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Honorable J. Larry Newton
Superintendent
Baldwin County Board of Education
175 Courthouse Square
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Boards of Education -
Municipalities - Funds - Streets

County boards of education are charged by the legislature with the task of supervising public education within the counties.

It is within the county board of education's discretion to use school funds for the purpose of building a new street to provide public access to a newly-constructed school building.

The county board of education may partially reimburse a municipality for the cost of constructing a new street to provide public access to a newly-constructed school building.

Dear Mr. Newton:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Is the Board authorized or empowered to appropriate public school funds to a

municipal corporation as partial reimbursement to such corporation of funds expended by it in paving an easement used as a means of ingress and egress to a school serving the corporation and surrounding area, and which easement is located on lands deeded to the Board by the municipal corporation?

FACTS AND ANALYSIS

The Code of Alabama 1975, § 16-8-8 provides:

"The general administration and supervision of the public schools of the educational interests of each county, with the exception of cities having a city board of education, shall be vested in the county board of education; provided that such general administration and supervision of any city having a city board of education may be consolidated with the administration and control of educational matters affecting the county and vested in the county board of education."

While the Attorney General has historically opined that county boards of education are created by the legislature and have only such powers as are conferred upon them by their creator, we have also recognized that county boards of education are specifically vested with the responsibility of determining the educational interests of the county. See our opinion to Honorable DeWayne Key, Superintendent, Lawrence County Board of Education, February 1, 1990, AG No. 90-00125, in which we upheld the county board's decision to pay legal fees. County boards of education are not agencies of the counties, but are local agencies of the state, charged by the legislature with the task of supervising public education within the counties. They execute a state function, namely, education. Hutt v. Etowah County Board of Education, 454 So.2d 973 (Ala. 1984). It is the intention of the legislature that the county boards determine at a local level the county's educational policies; the county board is afforded broad discretion to act in a manner which would advance and benefit those policies. Madden v. Alabama State Tenure Commission, 508 So.2d 1178 (Ala.Civ.App. 1987).

Included in the school board's power and authority granted by the legislature is the power to expend funds for the benefit of public education within the board's jurisdiction. The board's authority to expend funds includes the authority to build new schools and to build new roads for the purpose of providing access to the new school building. Without a road providing public access to a newly-constructed school building, after all, the building would be useless.

The board is authorized to determine the most economical manner in which to procure the building of a road to a school. If a municipality agrees to build a road to a new school, the school board can certainly negotiate with the municipality for mutually beneficial terms. Further, the board may expend school funds to partially reimburse a municipality for having built such a street at the board's request. The board may also contract with a municipality to build an additional street into the school area and may expend school funds for the building of the street into the school area.

We must note here, however, that a municipality has a duty to maintain all public streets in a reasonably safe condition for travel. See our opinions to Honorable Fred Horn, Senator, August 31, 1989, AG No. 89-00417, and to Mayor J. David Stout, City of Fort Payne, January 5, 1990, AG No. 90-00082. Once the streets have been built and are public, the municipality must maintain them, without assistance from funds designated by the legislature for use to improve education.

CONCLUSION


County boards of education are empowered by the legislature to expend education funds for the purpose of building a new road to provide public access to a newly-constructed school. The board may expend education funds to reimburse a municipality for having built such a road. Further, the board may contract with a municipality to build an additional street from a public road into the school area. However, those streets should then be maintained as public streets by the municipality.

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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
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By:



JANE L. BRANNAN
Assistant Attorney General

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